

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS

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WILLIAM C. NEWMAN

Director

January 13, 2009

Laurence R. Shaffer, Town Manager
Town Hall
4 Boltwood Avenue
Amherst, MA 01002

Re: Town of Amherst/Amherst July 4th Parade Committee

Dear Mr. Shaffer:

To date you have refused to issue the permit to the Amherst July 4th Parade Committee for July 4, 2009 at 3:00 p.m. the date and time where the committee has held a parade in Amherst for the past seven years. The permit application was filed with you seven months ago, and the Amherst Select Board in June endorsed issuance of the permit.

You have emphasized you are refusing to issue the parade permit to the Amherst July 4th Parade Committee because you do not approve of the message of this parade. More specifically, you do not believe that the Parade Committee is including points of view that *you* wish to have included in *their* parade. I point out to you, once again, that the July 4th Parade Committee has a state and federal constitutional right to make the statements they wish to make and to include only those they wish to include and that the government does not have the right to impose its views and its speech on a group of citizens. Ironically (and dangerously) your prohibition, on behalf of the government, of speech of which the government disapproves, in order to support government-endorsed speech is an anathema to the principles which you purport to espouse.

Please issue the permit not later than the close of business on January 16, 2009. If you refuse to do so, please advise as to the attorney who will be representing you in this matter.

Sincerely,



William C. Newman

WCN/keb

cc: Amherst July 4th Parade Committee
Stephanie O'Keeffe, Chair, Amherst Select Board (by first-class mail and facsimile (413) 259-2405)

BY FIRST-CLASS MAIL AND FACSIMILE (413) 259-2405

To: the Select Board, the Town Manager
From: Stephanie O'Keeffe
RE: Reminder of July 4th parade status
Date: 1/22/09

On the agenda for 1/26/09 is an update during the Town Manager's report regarding the Fourth of July parade situation, per the ACLU letter we received with our 1/21 meeting packets. Below I have pasted the relevant section from our approved minutes of the June 23, 2008 meeting on that subject, which was our most recent discussion of it. I have also pasted the lengthy summary I had written for my web site, in case these are helpful to us.

Stephanie

From the approved minutes of the June 23, 2008 Select Board Meeting

Fourth of July Parade

There was lengthy discussion among the Select Board and almost two dozen members of the public regarding plans for the 2009 Fourth of July Parade. No one from the Amherst Fourth of July Parade Committee was in attendance, and its Chair was reported to have called Ms. O'Keeffe earlier in the day to say that committee members were unavailable or unwilling to attend. Discussion involved different views about free speech and the meaning of the holiday; the rights of exclusion accorded to private parades; opportunities for inclusion via a public or alternative private parade; addressing conflicting needs with a separate parade or by incorporating a "free-speech zone" in the private parade; use of Town equipment; whether or not an alternative parade would or should require Town organization and resources; use of the word "Amherst" in the current private parade's name; and issues of Town Manager and Select Board jurisdiction. The sense of the Select Board was that the Parade Committee should be allowed to have a parade; that the Town should not prevent that by blocking out the full day with its own parade permit; and that Town equipment should not be used, but Town personnel should be allowed to participate without pay. Issues of the timing of the private parade, whether the Town or a separate body would create a second parade, or whether an agreement might be reached to incorporate something like a "free speech zone" into the private parade, remain undecided.

VOTED unanimously to express the sense of the Select Board that the Amherst Fourth of July Parade Committee be allowed a permit to hold a parade on July 4th, 2009, at an unspecified time, and that such parade would not include the use of Town equipment.

From my web summary of the 6/23/08 meeting. (This is written in the first person, so "I" means yours truly.)

<http://www.stephanicokeeffe.com/2008/07/june-23-2008-select-board-meeting.php#item6>

Fourth of July Parade Discussion (7:18)

Mr. Weiss introduced the discussion. He said that I had received a call from the Parade Committee Chair about members of that group being unable or unwilling to attend, and Mr. Weiss said that solving the problem would be difficult without them.

Mr. Weiss said that the Parade Committee had run the parade for several years and that they do an excellent job of organizing and running it, and that there had been complaints about the committee prohibiting participation of some protesters. He said that the Parade Committee has the legal right to invite or disinvite participation among anyone it chooses because the parade is a private event. He said that complaints had stemmed from the use of Town resources including vehicles and on-duty personnel, that such participation made it more of a public event, and that the two sides were now at an impasse. He said that the Town Manager had decided that the Town would hold its own parade next year and had reserved the time to do that. He said that if the Town were to hold the parade, it would be acceptable to use public resources, and no one would be excluded from participating. He said that there would be no changes in the 2008 parade, which will be run by the Parade Committee.

Mr. Weiss said that Mr. Shaffer has offered to meet with the Parade Committee since making the announcement about the Town's plans to run the parade in 2009, but that the Parade Committee has declined to meet. Mr. Weiss said that various options have been proposed for resolving this situation, including holding two parades, simultaneously or consecutively, one open to all and the other private. He said that the Town has a reservation for next year's parade, and the Parade Committee has a pending permit application that has not yet been approved nor denied. He said that the hope was to have both sides present now to achieve a resolution, which would now be difficult without the Parade Committee, but that those present could share ideas.

Ms. Brewer said by way of clarification that the Parade Committee had met with Mr. Shaffer on multiple occasions, but had not done so since the April announcement. She said she hoped to hear from the public and to discuss the Select Board's role in directing the Town Manager on this issue and on the Board's participation in the 2008 parade.

Mr. Shaffer said that he remains open to conversations, and that he thanks and congratulates the Parade Committee for the success of the parade. He said improvements to the parade can still be made and a resolution to the current problem could be found. He said that the Fourth of July parade has been a private parade, but that there is a reservation for a public parade for that day in 2009, and that he would be happy to work with the Parade Committee on this issue.

Terry Franklin asked what rationale had been given by the Parade Committee for not appearing at this meeting. I said that I had received a call from Parade Committee Chair Kevin Joy, who

told me that he was ill and could not make it, and that other members were unable or unwilling to attend. I said that I had expressed "extreme disappointment" over their not attending, that much effort had been put into arranging this discussion, and that the goal had been to reach a mutually satisfying solution, and not to have one side "win" and the other "lose."

Mr. Weiss said that there had been much notice that this discussion would be held tonight.

Harry Brooks said that the Town-sponsored parade would be open to all except those expressing obscenity or hate speech, and suggested that the Parade Committee be invited to be a part of that.

Ernie Urvater spoke about free speech values and their importance on the Fourth of July; said he doesn't consider himself a protester; and talked about signs he had carried without seeking permission in the parade in recent years, including "Honor the founders, Shut down the gulag," "Honor the troops, Shut down the mission," and a sign without words depicting Edvard Munch's painting "The Scream." He said he wanted to know if this year he would be allowed to march with such messages, or if the police would "be under the management of the Parade Committee," and have the right to remove him from the parade "by force." He suggested that the Parade Committee could sell participants the right to carry a sign, and wondered if he made a donation to the parade if that would allow him to carry any sign he wanted.

Mr. Weiss said he would like to be able to resolve the issue of using Town equipment and on-duty personnel. Mr. Shaffer said that fire trucks would be allowed in 2008, but that he hoped "to change the profile" in 2009, when officers in uniform would be allowed to march, but that Town equipment wouldn't be allowed unless the Parade Committee "allows freedom of speech." He said he had spent much time considering the issue of uniforms, and decided that personnel could march in uniform unpaid in 2009, but equipment wouldn't be allowed without "formal Town sanction."

Mr. Weiss said that in 2009 and beyond, if there are two parades, personnel could decide which to march in, or could march in both if they are not held simultaneously.

Ms. Awad said that she wanted the Select Board to explore "encapsulating" a "free speech zone" within the private parade, or having two parades. She said that many had expressed concerns about cost issues for a Town parade, and said that her vision of a Town parade would not be one full of "razzle-dazzle," but would have kids on decorated bikes, someone marching with a cow, people with a range of opinions expressed on signs, and sharing "the nice things that go on in Amherst." She said that if there are two parades, it would indicate an impasse and an unwillingness to talk with each other. She said that encapsulating within the private parade could become seamless and incorporated over time.

I asked if members of the audience would feel their needs would be met with the encapsulation concept Ms. Awad described.

Jon Nelms said he opposes the Town having a Fourth of July parade because it "glorifies America," and said that America engages in wars, kills innocent people, uses up world resources, pollutes and is causing a global food crisis.

Robert Romer said that the ACLU letter to the Town Manager expressing concern about the Town's handling of the parade issue represents only one ACLU lawyer's opinion, and is not representative of all ACLU members, of which Mr. Romer said he is one. He said that the right to criticize the government should be encouraged, particularly on the Fourth of July.

Edward Cutting said the situation reminded him of the line from George Orwell's *Animal Farm* – "All animals are equal, but some animals are more equal than others." He said the Boy Scouts can't use Town park property but the Farmers Market can take up downtown parking spaces, and that light poles can be used for posting every opinion but not flags. He said that people should have equal rights in what they protest, and that Town government's role is to maintain order, not to choose sides. He said that public events can't ban obscenity or hate speech, and said that UMass students might have much about the Town that they would want to protest during the 250th anniversary parade in fall of 2009. He said the Town Manager should have no more rights than anyone else is applying for a parade permit, and ought to follow the same rules, and said that public entities can't compete with private ones. He cautioned against setting precedents that might be regretted in the future.

Mr. Franklin said that he favored two parades as the solution allowing for the most free speech, and opposed the Town "evicting" the Parade Committee's parade. He said that the Parade Committee's absence suggest that it believes that the Town is looking to 'win' at the Committee's expense, and that a real conversation would not occur.

Emily Lewis said that she objects to it being called the "Amherst" Fourth of July parade, because she felt that it does not represent her and it was never voted on, and considers that name to be inaccurate, unfair and undemocratic.

Bob Ackermann said he supports the rights of the private parade, and said he was concerned about the Town's parade permit covering the whole day and thus preempting the private parade. He said that the issue was one of fundamental free speech rights, and said that if the private parade were required to accommodate other views, in incorporated segments or otherwise, it would compromise the private parade's free speech. He said he supported having two parades, and was happy to hear the Town Manager say that off-duty Town personnel could participate in any parade they so chose.

Rich Morse said he is sorry to see the Fourth of July parade be fed into the "meat grinder of Amherst politics," and said he feels he represents the "vast middle" who don't see July 4th as a day to protest, but rather to celebrate, and that the celebration as defined by the Parade committee feels "a little constrictive." He said it ought to be possible for people to find something to celebrate about America for those few hours, even if it isn't the same thing being celebrated by others, and that he wants people of all views to be together at the same parade on that day.

Nancy Foster spoke about her past participation issues with the parade as part of the group SAGE, and said that there needs to be acknowledgment that the fundamental freedoms the country was founded on are being threatened.

Paulette Brooks said that she encouraged the Select Board to try to bring peace in the community, and said that privatizing the parade or for "anyone to feel disenfranchised" from participating, would be "antithetical" to the symbolism of the Fourth of July.

Mr. Weiss said that the Fourth of July represents many things to different people and said that it represents both great and bad things, and that to him, it is "bittersweet." He said that among the negative elements symbolized by the day are exploitation of African American slaves and Native Americans, and not allowing women to vote, and that he thinks of those as well as the good things about the country. He said he believes there should be free speech for all. He said that the Select Board could not dictate that there be two parades, but can advise the Town Manager to shorten the length of the proposed Town parade to allow for the private parade committee to hold its parade.

I said that the Parade Committee's sense of how it wants to hold its parade is clear, and that we don't know how the different proposals suggested at the meeting might be received. I said that there didn't seem to be strong agreement among the group in attendance about whether the options of two parades or an "encapsulated" free speech segment in the private parade would be satisfying. I said that the point of the discussion was to find a way to accommodate this group's and the Parade Committee's desires, and asked if this group might be able to unify around one of these alternative concepts. I questioned how to proceed if that wasn't possible and asked why a separate parade had never been pursued by this group previously.

Ms. Stein suggested that a committee be formed to put together a parade for the town, and said that that should not prevent the private parade from taking place. She said that freedom of speech would allow for the private parade people to participate in the town parade if they so desired.

Ms. Awad agreed that a committee should be formed and said that in fairness to the private group, parade times should soon be determined.

Ms. Brewer said that use of Town equipment in the private is one of the primary objections, and that many people want no private resources to be spent on the parade, including using Town money or using LSSE to run a public parade. She said that eliminating the police and fire trucks from the private parade would solve that problem. She said that parades can and must conform to various rules, including insurance rules which sometimes prohibit throwing candy. She said that talking about the Town putting on the Fourth of July parade amounted to asking the Town to provide a new service, and one that it cannot afford. She said that there is no reason that an alternate parade needed to be run by the Town, when private volunteers could do it instead.

Mr. Weiss said that not having the Town involved in sponsoring a parade and not allowing Town equipment to be used in private parades would be fine with him. He said he isn't a "parade guy" anyway.

Ms. Brewer said that she is a big parade fan, and wanted to make sure that disallowing Town equipment would also not allow a group to pay for its participation.

Mr. Urvater called the situation a “tempest in a teapot,” saying that there were only a few people seeking to hold protest signs, and said that the whole situation could be solved if the Parade Committee would allow them to do that. He said that many of those involved with the Parade Committee are part of veterans’ organizations, and said that they are denying the rights for which they fought. He said that just because they have the right to exclude people from participating in the parade doesn’t mean they should exercise that right.

Stanley Maron talked about a “veterans for peace” group that might want to participate if they could carry signs, and said that deciding what parade participants can and can’t do was in conflict with the independence celebrated on Independence Day.

Ms. Awad said that a community parade doesn’t have to cost any money, and talked about an informal parade model where everyone who wants to march shows up at an appointed place and time and lines up behind those already assembled, calling it an “ideal to aim for.”

Carol Rothery said she was speaking for herself and for the League of Women Voters and said she urged the Select Board’s support for a Town parade. She said it is a misconception to think of the alternate parade concept as a protest, and said it would honor people in uniform and celebrate “all good the things about this country” including speaking against its wrongs. She said that people have a right to protest in a free society, and said that a Town parade could happen without any resource cost.

Mr. Weiss asked if the Select Board was ready to provide direction to the Town Manager on this issue, or would prefer to “sleep on it,” and offer direction on another night.

Ms. Brewer emphasized her point that a community parade, which she likened to an “extended block party,” should require no Town administration or support, citing the Parade Committee’s parade and the South Amherst Fourth of July parade as examples. She said that the whole community could participate and the Town wouldn’t need to be involved.

Mr. Weiss said he didn’t think the Select Board was ready to give any direction on the matter.

Ms. Stein said she was not sure about giving direction, but that a time for the Town parade would need to be established, and that either a community or a Town-sponsored parade would not need to take up the whole day. Mr. Weiss said that if the Town were not going to put on the parade, it would not need to determine the time – the time would be determined and sought by the entity seeking the permit.

I said that it seemed that the Select Board was in agreement about allowing the Parade Committee to continue to have its own parade next year, and that another parade might also occur. I suggested making our support for allowing the Parade Committee’s parade official, so that we could move forward, and suggested that they be able to maintain their traditional 3:00 time as well, enabling us to plan another option around that. Ms. Brewer added that Town equipment would not participate, unless satisfactory negotiations regarding encapsulation or some other option were to occur, and the equipment use might be reconsidered. I moved that the Town Manager be encouraged to approve the Parade Committee’s permit for July 4th, 2009 at

3:00 p.m., and that as of now, that parade would not include the use of Town equipment. Ms. Brewer seconded the motion.

Ms. Awad said she didn't support setting the parade time in the motion, saying that LSSE and others might determine reasons for scheduling the two parades at certain times.

Mr. Weiss said that whatever the timing determination, the desire is for the Town to not tie up the full day with its parade, and that the Parade Committee should be granted a permit.

Ms. Stein said that interested citizens could create a more inclusive parade, and said that 3:00 might be considered the choice time slot, so she didn't want to commit that to the Parade Committee. Mr. Weiss said that the Parade Committee has already applied for that time, and questioned giving it to another group who applies after the Parade Committee.

Mr. Weiss said he didn't mean for his comments to be interpreted as not liking what Mr. Shaffer had done with the Town's all-day parade permit, and said that had reserved the space and allowed this conversation to happen, and Mr. Weiss said he appreciated that.

Mr. Shaffer said that regarding the motion, he wasn't sure where Select Board authority lies in this matter, and cited a Town Meeting vote from March 11, 1970 which he said had no reference "to the Select Board having any authority in this arena whatsoever," and said "I'm not sure that you can direct the Town Manager in this fashion, relative to specifying a particular time." He said that the Select Board can give the Town Manager its sense of how to proceed, but that use of Town equipment and granting of permits is in the Town Manager's exclusive authority, but that he is "deeply respectful" of the Select Board's position on this. He said he hopes the Select Board continues to encourage communication on this issue.

Ms. Brewer said that her intention was not to be provocative but that her comments would sound that way, and said that if the Town Manager were to decide to put Town equipment in the parade after the Select Board requested that that not be done, that would factor in to considerations of his evaluation and contract renewal. She said that regardless of the authority granted by the Town Government Act, the community is looking to the Select Board as its elected officials to resolve this.

Mr. Weiss suggested the motion be that the sense of the Select Board was to allow the Amherst Fourth of July Parade Committee to be granted a permit to hold its parade on July 4th at an unspecified time, and to not use Town equipment. I said that I accepted that as a friendly amendment to my motion.

An audience member mentioned the objection to "Amherst" in the Parade Committee's name, and Mr. Weiss said that it was their name, and that he could respectfully request that they change it, but couldn't require that they do so.

Mr. Brooks asked if paid Town personnel would be allowed. Mr. Weiss said the personnel could participate, but not be paid for it.

Mr. Cutting said that use of Town vehicles in the parade should be left up to the fire and police chiefs who might determine there is some necessity for their presence. Mr. Weiss said that the public safety detail paid for by the Parade Committee would address such concerns, and wouldn't be expected to participate in the parade.

The vote to support the Town granting a parade permit to the Amherst Fourth of July Parade Committee for 2009, without a time specified and without use of Town equipment was unanimous.